## **EXHIBIT 1**

### MAGTEN ASSET VS. NORTHWESTERN CORP

CHRISTOPHER KEARNS - 1/10/08

CONCORDANCE AND CONDENSED TRANSCRIPT PREPARED BY:



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MAGTEN ASSET

BSA XMAX(7/7)

VS. NORTHWESTERN CORP

CHRISTOPHER KEARNS - 1/10/08

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A. What I viewed as the purpose of my report is embodied in the summary of opinions that I assume we are about to discuss and the discussion behind it that supports to these opinions.

I was asked to, as I said, rebut the conclusions of Mr. Marcus. He doesn't make an

I was asked to, as I said, rebut the conclusions of Mr. Marcus. He doesn't make any different conclusion about timing or acceleration of a bankruptcy or solvency. So since he didn't do the analysis, I don't have to rebut it.

Q. Have you made any conclusions about whether or not in late 2002 NorthWestern was able to meet its obligations as they became due?

A. As you see in the report in Exhibit A, there is a summary of liquidity available at that time. There is a discussion in my report as well of my opinion that NorthWestern would have had the ability to close the senior financing when it did or earlier.

I'm sorry. The context of time you

Q. Right.

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senior financing, and point you to Exhibit 2 as
 we have been talking about. So I focused on
 liquidity.

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Q. Did you look at documents that informed you about the actual state of affairs at NorthWestern in late 2002 in connection with the preparation of your report?

MS. DELANEY: Objection to form.

A. I would be happy to go through Appendix A piece by piece, if you like, in terms of the context of the question you're asking me. I looked at a lot of documents.

Q. Do you recall looking at documents from which you formed a view? I'm not talking an opinion – strike that.

Do you recall looking at documents from which you formed an understanding about NorthWestern's liquidity levels during late 2002?

A. Same answer. We can go through Appendix A. I looked at a lot of documents which included internal data as well as huge case projections included in the senior secured financing offering memorandum. I don't know

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A. I talk about liquidity. I talk about the company's ability to close the financing.

However, let me go back and repeat what I said in a prior answer. You're asking me to render a solvency opinion. My role was to rebut Mr. Marcus. He didn't render a solvency opinion, so nor did I.

Q. No, I'm not asking you to render a solvency opinion.

 A. I'm sorry. I think that question certainly deals with the ability to pay debts as they come due as a cash flow solvency.

Q. Let me try again.

A. Thank you.

Q. In connection with the work that you did, did you form any view about whether as a

(19) factual matter by late 2002, whether

(20) NorthWestern had income sufficient to support

(21) its existing debt levels?

A. Pardon me. The best way I can answer your question is to point you to it in my report, the bottom of page 3, the top of page 4, and that discussion on liquidity, the

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how to better answer your question.

Q. As a result of looking at those documents, what is your understanding of what the NorthWestern's position was with respect to liquidity in late 2002?

MS. DELANEY: Objection.

Q. If you have an understanding.

A. Again, best way I can posit this is, I would be happy to discuss and spend all the time you like on it. It's the bottom of page 3, top of page 4 on my opinion with respect to NorthWestern's liquidity and its ability to have that liquidity through 2002 and into 2003, and as I indicate on the top of page 4, to me the clear demonstration of that ability in addition to Appendix 2 is in my opinion the company would still have had the ability even in the scenario posited by Mr. Marcus to close on the \$390 million senior secured facility.

Q. Mr. Kearns, as we look at the bottom of page 3, do you see the words, "Would have"?

A. Yes.

Q. I'm asking you a different question.

BSA XMAX(6/6)

**MAGTEN ASSET** VS. NORTHWESTERN CORP CHRISTOPHER KEARNS - 1/10/08 Page 21 Page 23 (1) (1) (2) Q. Now, we've marked your report as (2) I don't see where there is Exhibit 1. Could you thumb through it and (3) (3) discussion about timing and preservation of (4) confirm that is your expert report? (4) liquidity in the event that the scenario he (5) A. (Witness reviewing document.) (5) posits were to happen. For example, I didn't (6) Q. I don't mean to limit any (6) see anything in his report similar to what is (7) examination that you would like to do. So if (7) in mine as Exhibit 2. (8) you want to more than thumb through it, please (8) Q. So if he had something that looked (9) feel free. (9) like Exhibit 2, you would not state that Marcus (10) A. Yes. (10) assumed that NorthWestern would not have acted differently? (11) (Whereupon a report by Mr. Marcus (11)MS. DELANEY: Objection. (12)was marked as Kearns Exhibit 2 for (12)identification, as of this date.) (13) A. Frankly, if he had something like I (13)have in Exhibit 2, his conclusions would have (14)Q. Sir, we've marked as Exhibit 2 the (14)report prepared by Mr. Marcus. So to the been completely different. (15) (15)extent you would like to refer to it, you have (16)Q. Which conclusions would have been (16) different? (17) it there, and also, of course, I may be asking (17)(1B) questions that refer to it. (18) A. The company's -- well, I'll be happy A. Okav. (19) to go through it, because a lot of it is (19) I'm looking at page 3 of your (20) embodied in my report, in particular, section Q. (20) (21) report. (21) Roman numeral V. (22) Q. Now, is it your view that you (22) A. Okay. (23) establish in your report that if efforts had Q. And at the section that you have (23) (24) been accelerated to improve NorthWestern's (24) labeled, "Summary of Conclusions," are you with (25) financial condition, bankruptcy would not have (25)me? Page 24 Page 22 (1) (1) (2) Yes. (2) ensued? Q. Let's look at the first sentence (3) MS. DELANEY: Can I hear the (3) together. (4) question again, please? (4) "Marcus assumes that, had (5) (Whereupon the record was read back (5) (6) NorthWestern disclosed the negative financial (6) by the reporter.) information concerning its non-regulated (7) A. I don't have a view on whether (7) businesses earlier in 2002, NorthWestern would (8) bankruptcy ultimately would have been avoided. (B) (9) not have acted any differently than it did (9) Q. So accelerating the acceleration (10)act." (10)efforts that you describe in your report may or may not have impacted what in reality became a (11) Can you show me where in the report (11)September 2003 bankruptcy filing, correct? (12)Mr. Marcus says that or where you derive that (12)(13) assumption? (13)MS. DELANEY: Objection to form. (14) A. It's not an assumption. It is my (14) A. Let me try it this way: I was asked conclusion, and I derive it from, frankly, the (15)by counsel to evaluate and, where appropriate, (15) (16) body of Mr. Marcus' report when he talks about (16) rebut the conclusions made by Mr. Marcus. I (17)the chain of events that would have happened (17) didn't see - if you can point it out to me, I (18) and in the event that, as he posits it, (18) would be happy to discuss it with you -- where different and more negative information was put (19) he has any conclusions that say anything (19) (20) out in the marketplace by the company earlier (20) different than September of '03. So I didn't (21) than what occurred, and the way I read his (21) comment on it. I don't have a view on it. The (22) bankruptcy happened September of '03, as we all (22) report, then, the assumption he makes is that (23) the secured financing would have been (23) (24) considered at the time it was as well as the (24) Q. So what did you view as the purpose (25)equity offering and the like. (25) of your report?

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Page 31 Page 29 (1) (1) connection with the work you did to form the (2) Let's try it again. (2) opinions that are contained on pages 3 and 4, As a result of the documents that (3) (3) you reviewed, did you develop an understanding (4) et cetera? (4) A. Well, that sounds to me again like a of what NorthWestern's actual historical (5) (5) backhanded way of asking me to opine on cash (6) liquidity position was during late 2002? (6) flow solvency. Mr. Marcus didn't do it, and in (7) A. This goes back to the discussion you (7) and I just had about my opinion 1, which is the rebutting Mr. Marcus, since he didn't render a (8) (8) cash flow solvency opinion, neither did I. (9) (9) premise, I believe, embodied in Mr. Marcus' However, as we discussed, in my report that NorthWestern would not have acted (10)(10) view, as I have gone through now more than any differently than it did, meaning the (11)(11) once, particularly as evidenced by the ability (12) (12)liquidity that you allude to in late 2002 would to close the senior secured facility and even (13)have been as it was even if NorthWestern had (13)after the bad news, substantially all the bad (14)made the disclosures earlier that Mr. Marcus (14)news would have been known by the prospective posits, meaning you're asking me to assume bad (15)(15)lenders. NorthWestern had liquidity to get news hits the marketplace and the company has (16)(16)(17)done nothing to react, and in my opinions 1 and (17) through 2002 and into 2003, but I'm not going 2, that is not what I'm saying. (18) to answer questions that deal with looking for (18)(19) me to opine on cash flow or balance sheet (19)Q. That wasn't my question. Let's try (20)solvency. (20) again. (21) You asked about leverage there. A. Ask it again. (21) (22) That was a loaded question in terms of leverage (22) Q. I'm not asking you to assume anything. I'm asking you whether in reviewing (23) and cash flow, either of which could be (23) documents and reviewing historic financial (24) construed as asking me for a solvency opinion. (24)(25) Your expert didn't render that opinion, nor did reports or 10-Q's, amended or original, (25) Page 32 Page 30 (1) (1) whatever it is you looked at, whether you (2) I. (2) (3) Q. So is it your view that every time i developed an understanding of what (3) ask you about whether you have an understanding NorthWestern's liquidity position was in late (4) (4) of something, that I'm asking you for your (5) (5) 2002. opinion? A. Sitting here today, the best way I (6) (6) A. You can read that last question (7) can answer that is in late 2002, as discussed (7) back, if you like, but that was my view on that at the bottom of page 2, the top of page 3, in (8) (8) question, the way you asked the prior question. my opinion NorthWestern had the ability, and as (9) (9) (10) Q. We will try again. we know, did close on the senior secured (10)Did you read any documents provided (11)facility. (11)to you by NorthWestern in which NorthWestern That could have happened in February (12) (12)stated that at the end of 2002 or by late 2002 as it did after the bad news hit the (13)(13)NorthWestern was significantly overleveraged (14) marketplace or earlier, with bad news hitting (14)with current and projected income sufficient to (15) the marketplace earlier as Mr. Marcus posits. (15) support existing debt levels? Did you see any (16) I don't know how better to answer your (16) documents that describe NorthWestern in that question. (17) (17)way? (18) Q. By late 2002, isn't it the fact that (18) even with uncorrected SEC reports out there A. If you want to show me a document, (19) (19) (20) I'll be happy to comment on it. I don't know that NorthWestern was significantly (20)

levels?

overleveraged and with current projected income

Is that something you looked at in

insufficient to support its existing debt

MS. DELANEY: Objection.

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how to better answer your question than I have,

conclusion that NorthWestern would have had

adequate liquidity through 2002 and into 2003,

which is I looked at a bunch of documents

listed in Appendix A. I have come to a

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Page 33 Page 35 (1) (1) (2) particularly as evidenced by its ability to (2) top, as you see, I have adjusted for various close the senior credit facility. If you want (3) (3) factors, and I'm going to say this again. My to show me a document, I'll be happy to comment (4) (4) opinion at the bottom of page 3, top of page 4, on it. is adequate liquidity through 2002 and into (5) (5) (6) Q. In order to form your opinions that (6) 2003. (7) you - this opinion that you keep repeating (7) To my view, the way you asked that (8) about liquidity, in order to form that (8) question again was asking for me to render an (9) opinion -(9) opinion on cash flow solvency. Your guy didn't (10)MS. DELANEY: Objection. (10) do it. I didn't rebut in that context because (11) (11)Q. - did you have to gain an there wasn't a cash flow solvency opinion (12)understanding of what as a factual matter (12)embodied in Mr. Marcus' report. I don't know (13) NorthWestern's liquidity position was during (13)how better to answer this. (14) late 2002? (14) Q. What was your understanding of the MR. KALECZYC: Objection. (15) (15)amounts that were necessary for NorthWestern to MS. DELANEY: Objection. have available to support its existing debt (16)(16) (17) levels at the end of 2002? (17) A. The best way I can answer your (18)question the way you asked that one is to point (18) MS. DELANEY: Objection. (19)you Appendix 2, where I looked at ending cash (19) A. Same answer as prior. (20)position for NorthWestern as it reported it and (20) Q. So you determined that it had sufficient liquidity without determining what (21)made adjustments to, on a pro forma basis, and (21)(22) develop a view on available liquidity at (22) the amounts necessary to support the debt (23)December 31, 2002, accepting Mr. Marcus' (23)levels would be? premise that the equity offering would not have (24)A. Same answer, bottom of page 3, top (24)(25)closed, certainly disagreeing with Mr. Marcus' (25)of page 4 on the issues that were evaluated by Page 36 Page 34 (1) (1) the prospective lenders who decided to fund in (2) premise that the senior facility could not have (2) closed and making other adjustments as you see through a senior secured facility, the (3)(3) there. I don't know how to better answer your (4) information that they looked at and evaluated. (4) question. (5) We can look at that offering memo if (5) Again, to some extent this goes back (6) you like but, again, my conclusion was (6) (7) to the first question which the -- I'm sorry, (7) NorthWestern would have had access to adequate (8) the first opinion of mine and how I view (8) liquidity through 2002 and into 2003 even as (9) Mr. Marcus posits without the proceeds of the (9) Mr. Marcus' report and conclusions as against (10) (10) what the company could have done to have equity offering. (11) adequate liquidity through 2002 and into 2003. (11) Q. And that's a determination you made (12)If we are talking past each other, I apologize, (12) without determining amounts necessary for but I don't know how to better answer this. (13)NorthWestern to support its existing debt (13)levels; is that correct? (14)Q. So as we look at the chart you enjoy (14) turning to, you have no view about whether (15) A. The single biggest debt payment (15)either the cash availability number at the top (16)

correct?

of the chart, the \$46 million number or the

cash number at the bottom of the chart, the

as of the end of December 2002; is that

MS. DELANEY: Objection.

bottom of the chart. The 45 million at the

A. First of all, it's 136.5 at the

\$135 million number, was sufficient in any way

to support existing debt levels at NorthWestern

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arising arguably at the end of 2002 would have

The outstanding revolver was accomplished with

been the paydown or payoff of the revolver.

I don't know how to better answer

your question, because outside of the revolver,

to my understanding, there was not a maturity

of any additional significance during that time

frame. I believe there are some medium-term

notes that were paid off around that time or

the senior secured facility.

## **EXHIBIT 2**

# **SEALED DOCUMENT**